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APR 11 2006

In re Application of:  
Katsuhiko Hayashi  
Serial No.: 10/743,129  
Filed: December 23, 2003  
Attorney Docket No.: 246923US2

DECISION ON PETITION

This is a decision on the petition filed on July 22, 2005, under 37 C.F.R. § 1.181, requesting the Commissioner to invoke his supervisory authority to compel reconsideration by the examiner of her statement of reasons for allowance. The petition is before of the Director of Technology Center 2800 for review.

The petition is **DISMISSED**.

Petitioner asserts that in the Reasons for Allowance set forth in the Notice of Allowability of May 4, 2005, constitutes an error because the examiner inappropriately mischaracterizes the invention by placing unwarranted interpretation of the claims on record.

As set forth in 37 CFR 1.104(e) and MPEP 1302.14, an examiner may set forth his or her reasoning in support of his or her allowance of the claims. While petitioner may disagree with the examiner's statements, such does not clearly demonstrate that there is an error on the part of the PTO. See *In re Volk*, 634 F.2d 607, 207 USPQ 1086, (CCPA 1980) (examiner's contested construction of the allowed claims was not expunged from the record, and was permitted to stand). Moreover, petitioner's comments on the examiner's statements would generally not be referred to the examiner since the examiner's statement should not create an estoppel. Only applicant's statements should create an estoppel. See MPEP 1302.14, which states:


"The application file generally will not be returned to the examiner after the entry of such comments made by applicant on the examiner's statement of reasons for allowance."

Petitioner supplies reasons in support of his contention that the interpretation of the examiner is in error. As such, petitioner has exercised, by way of the instant communication (and may still exercise), his right under 37 CFR 1.104(e), to place his comments on the record in reply to the examiner's statements..

Petitioner may wish to consider **promptly** filing comments under 37 CFR 1.104(e).

The application file is being forwarded to Publishing Division to be processed into a patent.

Inquiries regarding this decision should be directed to Hien H. Phan, Special Program Examiner,  
at (571) 272-1606.



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